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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

'83 JAN 17 P12:29

Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Dixon Callihan
Dr. Richard F. Cole

SECRETARY
REG & SERVICE
BRANCH

In the Matter of)	Docket Nos. 50-454 OL
)	50-455 OL
COMMONWEALTH EDISON COMPANY)	
)	
(Byron Nuclear Power Station,)	
Units 1 and 2))	January 14, 1983

MEMORANDUM AND ORDER
IN ANTICIPATION OF EVIDENTIARY HEARING

The Chairman at the Atomic Safety and Licensing Board recently conducted telephone conference calls among the parties to determine whether there are any impediments to the scheduled beginning of the evidentiary hearing, March 1, 1983.¹ It appears that the hearing will begin as scheduled. The parties shall proceed accordingly. In the course of the conference the parties were advised of some Board expectations with respect to prehearing and hearing matters. These and other Board requirements are set out below.

¹Telephone conferences were conducted on January 7, and 10, 1983. All parties or their counsel participated.

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Testimony

Written direct testimony is to be served by express mail or its equivalent on February 15, 1983 or by hand delivery on February 16. Written testimony shall contain on a face page a brief summary or outline of the testimony and the conclusions its sponsor seeks to support. The outline or summary will be bound into the transcript but will not be a part of the testimony unless the Board and parties agree that it will be. Where testimony is presented by a panel of witnesses, the testimony shall indicate the portion supported by each witness of the panel.

Frequently witnesses have corrections or modifications of previously served testimony at the time it is offered. In such instances the Board wishes to avoid the time-consuming and sometimes confusing oral modifications. Therefore the parties shall provide to the reporter a copy of the testimony as modified and shall provide to the Board and parties corrected pages of the testimony except for last minute minor changes. The Board prefers that testimony be presented in question-and-answer form if the subject matter is amenable to that method.

Exhibits

The Board wishes to avoid surprise with respect to exhibits to be offered into evidence. Therefore the parties shall provide to the Board and the parties copies of non-bulky exhibits (less than about 200 pages) at the time the written testimony is served or as soon thereafter as the parties have determined that an exhibit is to be offered. Where exhibits are already in the possession of the Board and parties they may

be identified rather than served. Bulky exhibits (more than about 200 pages) must be identified and the Board will make a prompt determination as to when or whether they must be served.

Cross Examination Plans

Each party shall provide to the Board at the beginning of any cross examination a written plan for that examination. If convenient, however, the plans should be provided earlier. The parties may agree among themselves whether the plans will be afforded to the other parties at the beginning or at the end of the witnesses' appearances. But, in any event, the plans must sooner or later be made available to the other parties in keeping with the strictures against ex parte communications. A plan will not become a part of the record of the proceeding except upon motion supported by good cause. No particular format for the cross examination plan is required. It may, for example, be in outline or question-by-question format, but shall be sufficient for the Board to understand the purposes and objectives of the cross examination and to follow its course. Parties might consider early service of their cross examination plans upon the party sponsoring the respective witness to better assure that the witness is prepared to address the matters upon which he will be examined.

Contentions and Issues

In order to avoid any misunderstanding concerning the identity and content of the contentions to be litigated, counsel for the Applicant will prepare a document containing the final version of each contention reflecting any modifications. Counsel will circulate the document among the parties and seek a stipulation which will be provided to the Board

on or before February 8, 1983. Applicant's counsel shall also undertake to gather party approval for an agenda for the presentation of evidence which shall be submitted to the Board with the written direct testimony. The Board prefers that the hearing be organized according to issue rather than according to party, i.e., all evidence on a particular issue be received before moving to the next issue. In scheduling the presentation of evidence the parties should be aware that the beginning of the hearings will be reserved for limited appearance statements.

Proposed Findings and Conclusions of Law

. In the telephone conference of January 7, 1983 the parties were informed that the Board will, and by this order the Board does, direct the parties to file proposed findings and fact and conclusions of law on the schedule which shall be approved at the end of the hearing. In accordance with 10 CFR 2.754(b) the Board will deem a failure to file proposed findings of fact and conclusions of law to be a default. An appropriate order or decision may be entered accordingly.

DAARE/SAFE Contentions 11 and 12

By its order of May 26, 1982 the Board ruled that the intervenors DAARE/SAFE may proffer their contention on turbine generator orientation (proposed Contention 11) during a reasonable time following the analysis to be performed and described by the Applicant. During the telephone conference of January 10, 1983 the parties reported that the Applicant had provided this information to DAARE/SAFE on August 26, 1982. DAARE/SAFE acknowledged this fact but reported that it was awaiting the NRC Staff's evaluation before it proffers its Contention 11 and that the Staff's evaluation had not yet been published. The Chairman cautioned

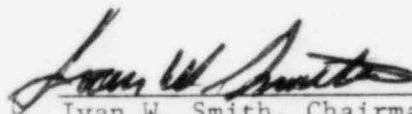
DAARE/SAFE's representative that delaying its proffer for the Staff's analysis may or may not be regarded as good cause for the late filing of contentions and recommended that DAARE/SAFE proceed promptly with pursuing its contention on turbine generator orientation.

The Board's order of May 26, 1982 made a similar ruling with respect to DAARE/SAFE's proposed Contention 12 (loss of power) with respect to an ongoing investigation of Hayward-Tyler pumps. The parties reported that the results of the investigation are not yet available. Accordingly the DAARE/SAFE's obligation to proceed timely with that contention was not discussed, nor is it addressed by this order.

Time and Place for Hearing

As stated, the hearing will commence on or about March 1, 1983 in Rockford, Illinois. The exact time and place will be announced as soon as definite arrangements are made.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman
Administrative Law Judge

Bethesda, Maryland

January 14, 1983